

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

NO. 05-11594-RCL

**GERALDINE FAVALORO, for herself
and on behalf of all others similarly
situated,
Plaintiff**

v.

**PRESIDENT AND FELLOWS OF
HARVARD COLLEGE, BAYVIEW
CREMATORY, LLC, a New Hampshire
Limited Liability Company, LINDA
STOKES, Trustee of the Dekes
Realty Trust of 107 South Broadway,
Lawrence, Massachusetts, and JOHN
J. GENTILE**

**ANSWER OF DEFENDANT, LINDA
STOKES, AS TRUSTEE OF THE
DEKES REALTY TRUST OF 107
SOUTH BROADWAY, LAWRENCE,
MASSACHUSETTS, TO PLAINTIFF'S
COMPLAINT**

THE PARTIES

1. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 1 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

2. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 2 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

3. The defendant admits the allegations contained in paragraph 3 of the plaintiff's complaint.

4. The defendant admits the allegations contained in paragraph 4 of the plaintiff's complaint.

5. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 5 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

JURISDICTION AND VENUE

6. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 6 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

7. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 7 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

8. The defendant denies the allegations contained in paragraph 8 of the plaintiff's complaint as currently phrased.

9. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 9 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

10. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 10 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

11. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 11 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

PRELIMINARY ALLEGATIONS

12. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 12 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

13. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 13 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

14. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 14 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

15. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 15 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

16. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 16 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

17. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 17 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

18. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 18 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

19. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 19 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

20. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 20 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

21. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 21 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

22. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 22 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

23. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 23 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

24. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 24 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

25. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 25 of the plaintiff's complaint as currently phrased and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

26. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 26 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

27. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 27 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

28. The defendant denies the allegations contained in paragraph 28 of the plaintiff's complaint, as currently phrased.

29. The defendant admits that Derek A. Wallace was the sole beneficiary of the Dekes Realty Trust of 107 South Broadway, Lawrence, MA, but denies the remaining allegations contained in paragraph 29 of the plaintiff's complaint.

30. The defendant denies the allegations contained in paragraph 30 of the plaintiff's complaint, as currently phrased.

31. The defendant admits that she is the mother of Derek A. Wallace, that she knew of the existence of the Bayview Crematory, and that it operated, but denies the remaining allegations contained in paragraph 31 of the plaintiff's complaint, as currently phrased.

32. The defendant denies the allegations contained in paragraph 32 of the plaintiff's complaint.

33. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 33 of the plaintiff's complaint as currently phrased and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

34. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 34 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

35. The defendant denies the allegations contained in paragraph 35 of the plaintiff's complaint, as currently phrased.

36. The defendant denies the allegations contained in paragraph 36 of the plaintiff's complaint..

CLASS ACTION ALLEGATIONS
NUMEROSITY

37. Paragraph 37 of the plaintiff's complaint does not assert claims against the defendant, Linda Stokes, Trustee of the Dekes Realty Trust of 107 South Broadway, Lawrence, MA, and, therefore, does not require a response on her behalf. To the extent that paragraph 37 should be construed as asserting allegations against Stokes, the defendant denies.

38. The defendant denies the allegations contained in paragraph 38 of the plaintiff's complaint.

39. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 39 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

COMMONALITY

40. The defendant denies the allegations contained in paragraph 40 of the plaintiff's complaint, as currently phrased.

TYPICALITY

41. The defendant denies the allegations contained in paragraph 41 of the plaintiff's complaint.

42. The defendant denies the allegations contained in paragraph 42 of the plaintiff's complaint.

43. The defendant denies the allegations contained in paragraph 43 of the plaintiff's complaint, as currently phrased.

ADEQUACY OF REPRESENTATION

44. The defendant denies the allegations contained in paragraph 44 of the plaintiff's complaint.

45. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 45 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

REQUIREMENTS OF RULE 23(b)

46. The defendant is without knowledge as to the truth or falsity of the allegations in paragraph 46 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

47. The defendant denies the allegations contained in paragraph 47 of the plaintiff's complaint..

48. The defendant denies the allegations contained in paragraph 48 of the plaintiff's complaint.

49. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 49 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

COUNT 1
NEGLIGENCE-BAYVIEW

50. The defendant, Linda Stokes, as Trustee of the Dekes Realty Trust of 107 Broadway, Lawrence, MA, restates, reasserts and incorporates by reference her responses to all prior allegations contained in the plaintiff's complaint as if specifically set forth herein.

51-57. The allegations contained in paragraphs 51 through 57 of the plaintiff's complaint are not asserted against defendant, Linda Stokes, Trustee of the Dekes

Realty Trust of 107 Broadway, Lawrence, MA and, therefore, do not require a response on her behalf. To the extent that any of these allegations should be construed as allegations against the defendant, Linda Stokes, the defendant, Linda Stokes, denies.

COUNT II
NEGLIGENCE-HARVARD

58. The defendant, Linda Stokes, as Trustee of the Dekes Realty Trust of 107 Broadway, Lawrence, MA, restates, reasserts and incorporates by reference her responses to all prior allegations contained in the plaintiff's complaint as if specifically set forth herein.

59-67. The allegations contained in paragraphs 59 through 67 of the plaintiff's complaint are not asserted against defendant, Linda Stokes, Trustee of the Dekes Realty Trust of 107 Broadway, Lawrence, MA and, therefore, do not require a response on her behalf. To the extent that any of these allegations should be construed as allegations against the defendant, Linda Stokes, the defendant, Linda Stokes, denies.

COUNT III
NEGLIGENCE-GENTILE

68. The defendant, Linda Stokes, as Trustee of the Dekes Realty Trust of 107 Broadway, Lawrence, MA, restates, reasserts and incorporates by reference her responses to all prior allegations contained in the plaintiff's complaint as if specifically set forth herein.

69-79. The allegations contained in paragraphs 69 through 79 of the plaintiff's complaint are not asserted against defendant, Linda Stokes, Trustee of the Dekes Realty Trust of 107 Broadway, Lawrence, MA and, therefore, do not require a response on her behalf. To the extent that any of these allegations should be construed as allegations against the defendant, Linda Stokes, the defendant, Linda Stokes, denies.

COUNT IV
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
ALL DEFENDANTS

80. The defendant, Linda Stokes, as Trustee of the Dekes Realty Trust of 107 Broadway, Lawrence, MA, restates, reasserts and incorporates by reference her responses to all prior allegations contained in the plaintiff's complaint as if specifically set forth herein.

81. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 81 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

82. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 82 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

83. The defendant is denies the allegations in paragraph 83 of the plaintiff's complaint to the extent that these allegations are being asserted against the defendant, Linda Stokes, Trustee of the Dekes Realty Trust of 107 South Broadway, and is without knowledge as to the remainder of these allegations and, therefore, under the Rules of Civil Procedure, these allegations are denied.

84. The defendant denies the allegations contained in paragraph 84 of the plaintiff's complaint.

85. The defendant denies the allegations contained in paragraph 85 of the plaintiff's complaint.

86. The defendant denies the allegations contained in paragraph 86 of the plaintiff's complaint, to the extent these allegations are being asserted against the defendant, Linda Stokes, Trustee of the Dekes Realty Trust of 107 South Broadway,

Lawrence, MA, and is without knowledge as to the remainder of these allegations and, therefore, under the Rules of Civil Procedure, these allegations are denied.

87. The defendant denies the allegations contained in paragraph 87 of the plaintiff's complaint, to the extent these allegations are being asserted against the defendant, Linda Stokes, Trustee of the Dekes Realty Trust of 107 South Broadway, Lawrence, MA, and is without knowledge as to the remainder of these allegations and, therefore, under the Rules of Civil Procedure, these allegations are denied.

88. The defendant denies the allegations contained in paragraph 88 of the plaintiff's complaint, to the extent these allegations are being asserted against the defendant, Linda Stokes, Trustee of the Dekes Realty Trust of 107 South Broadway, Lawrence, MA, and is without knowledge as to the remainder of these allegations and, therefore, under the Rules of Civil Procedure, these allegations are denied.

89. The defendant denies the allegations contained in paragraph 89 of the plaintiff's complaint, to the extent these allegations are being asserted against the defendant, Linda Stokes, Trustee of the Dekes Realty Trust of 107 South Broadway, Lawrence, MA, and is without knowledge as to the remainder of these allegations and, therefore, under the Rules of Civil Procedure, these allegations are denied.

COUNT V
RECKLESS and/or INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
ALL DEFENDANTS

90. The defendant, Linda Stokes, as Trustee of the Dekes Realty Trust of 107 Broadway, Lawrence, MA, restates, reasserts and incorporates by reference her responses to all prior allegations contained in the plaintiff's complaint as if specifically set forth herein.

91. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 91 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

92. The defendant is without knowledge as to the truth or falsity of the allegations contained in paragraph 92 of the plaintiff's complaint and, therefore, under the Rules of Civil Procedure, this paragraph is denied.

93. The defendant denies the allegations contained in paragraph 93 of the plaintiff's complaint, to the extent these allegations are being asserted against the defendant, Linda Stokes, Trustee of the Dekes Realty Trust of 107 South Broadway, Lawrence, MA, and is without knowledge as to the remainder of these allegations and, therefore, under the Rules of Civil Procedure, these allegations are denied.

94. The defendant denies the allegations contained in paragraph 94 of the plaintiff's complaint.

95. The defendant denies the allegations contained in paragraph 95 of the plaintiff's complaint, to the extent these allegations are being asserted against the defendant, Linda Stokes, Trustee of the Dekes Realty Trust of 107 South Broadway, Lawrence, MA, and is without knowledge as to the remainder of these allegations and, therefore, under the Rules of Civil Procedure, these allegations are denied.

96. The defendant denies the allegations contained in paragraph 96 of the plaintiff's complaint, to the extent these allegations are being asserted against the defendant, Linda Stokes, Trustee of the Dekes Realty Trust of 107 South Broadway, Lawrence, MA, and is without knowledge as to the remainder of these allegations and, therefore, under the Rules of Civil Procedure, these allegations are denied.

97. The defendant denies the allegations contained in paragraph 97 of the plaintiff's complaint, to the extent these allegations are being asserted against the

defendant, Linda Stokes, Trustee of the Dekes Realty Trust of 107 South Broadway, Lawrence, MA, and is without knowledge as to the remainder of these allegations and, therefore, under the Rules of Civil Procedure, these allegations are denied.

98. The defendant denies the allegations contained in paragraph 98 of the plaintiff's complaint, to the extent these allegations are being asserted against the defendant, Linda Stokes, Trustee of the Dekes Realty Trust of 107 South Broadway, Lawrence, MA, and is without knowledge as to the remainder of these allegations and, therefore, under the Rules of Civil Procedure, these allegations are denied.

99. The defendant denies the allegations contained in paragraph 99 of the plaintiff's complaint, to the extent these allegations are being asserted against the defendant, Linda Stokes, Trustee of the Dekes Realty Trust of 107 South Broadway, Lawrence, MA, and is without knowledge as to the remainder of these allegations and, therefore, under the Rules of Civil Procedure, these allegations are denied.

COUNT VI
CLASS RELIEF SOUGHT

There are no allegations in Count VI of the plaintiff's complaint against the defendant, Linda Stokes, as Trustee of the Dekes Realty Trust of 107 South Broadway, Lawrence, MA. To the extent Count VI may be construed as asserting any allegations against defendant, Linda Stokes, the defendant, Linda Stokes, denies.

AFFIRMATIVE DEFENSE

FIRST AFFIRMATIVE DEFENSE

The complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The cause of action mentioned in the complaint did not accrue within the time period limited by statute for commencement of this action.

THIRD AFFIRMATIVE DEFENSE

The defendant denies that any servant or agent of the defendant was involved in any incident at the time and place alleged.

FOURTH AFFIRMATIVE DEFENSE

The person who caused the alleged damages to the plaintiffs was not a person for whose conduct the defendant was responsible.

FIFTH AFFIRMATIVE DEFENSE

The allegations contained in the plaintiffs' complaint do not meet the requirements of Fed. R. Civ. P. Rule 23.

SIXTH AFFIRMATIVE DEFENSE

The plaintiffs do not meet the necessary requirements to constitute a class.

SEVENTH AFFIRMATIVE DEFENSE

The plaintiffs have failed to mitigate their damages, if any, in a reasonable manner.

EIGHTH AFFIRMATIVE DEFENSE

The defendant denies that any action or inaction on her behalf proximately caused injury to the plaintiffs.

NINTH AFFIRMATIVE DEFENSE

This court lacks jurisdiction over the defendant.

TENTH AFFIRMATIVE DEFENSE

The plaintiffs are barred, in whole or in part, by the doctrines of laches, waiver, and/or estoppel.

ELEVENTH AFFIRMATIVE DEFENSE

The defendant asserts that to the extent that evidence has been spoliated, the defendant has been adversely affected.

TWELFTH AFFIRMATIVE DEFENSE

The defendant's negligence, if any, did not proximately cause any damage to the plaintiffs.

THIRTEENTH AFFIRMATIVE DEFENSE

The plaintiffs' damages do not meet the jurisdictional requirement of this Court.

JURY DEMAND

The defendant, Linda Stokes, Trustee of the Dekes Realty Trust of 107 Broadway, Lawrence, Massachusetts, demands a trial by jury on all issues so triable.

Respectfully submitted,

CLARK, HUNT & EMBRY

/s/ William F. Ahern, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 2005, a true and correct copy of this Motion to Dismiss of Defendant, Linda Stokes, as Trustee of the Dekes Realty Trust of 107 South Broadway, Lawrence, Massachusetts, was served on all counsel of record in this matter.

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I also certify that courtesy copies were served on the following counsel:

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_____/s/ Mandi Jo Hanneke_____
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